

nasscom

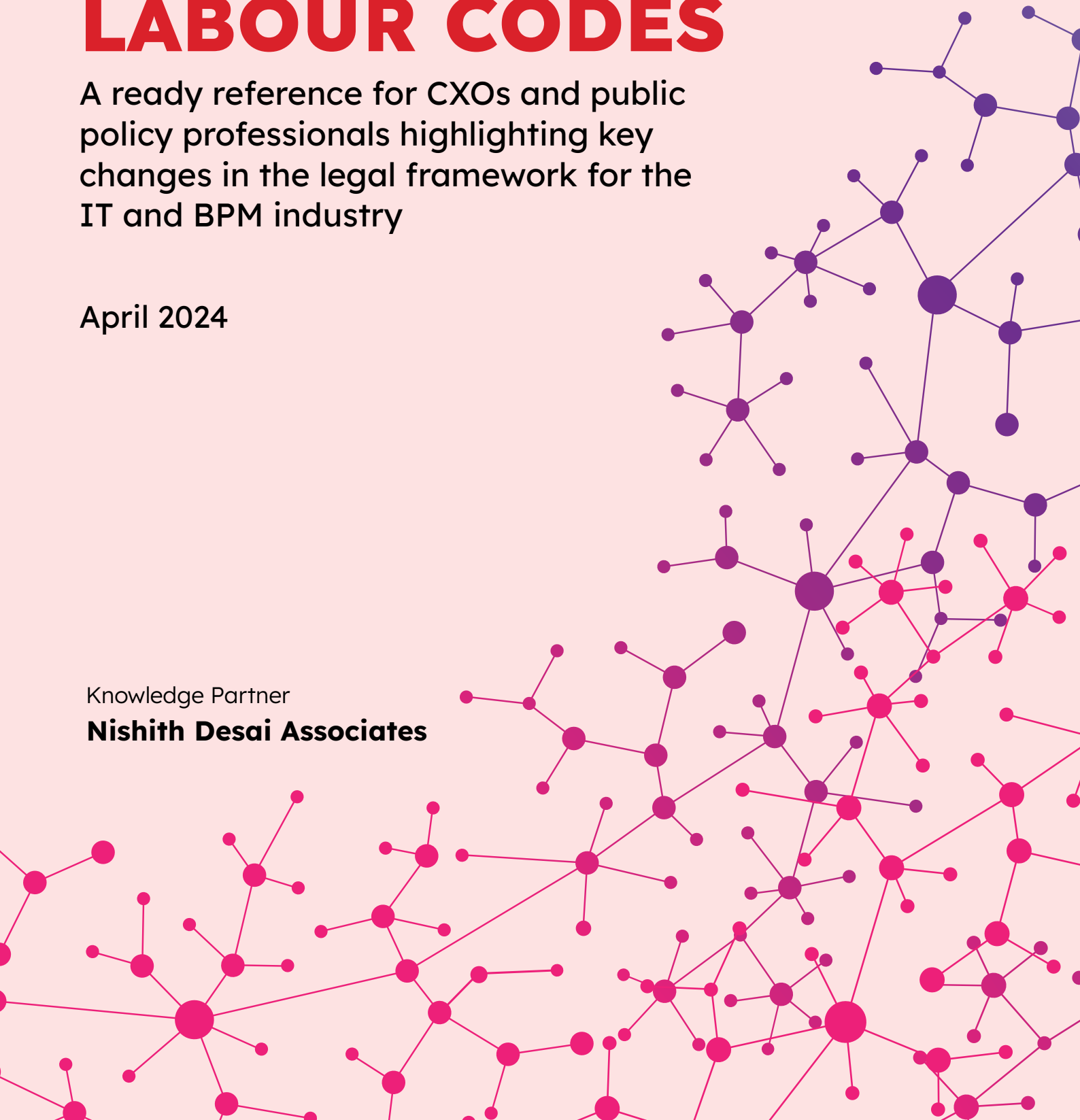
HANDBOOK ON LABOUR CODES

A ready reference for CXOs and public policy professionals highlighting key changes in the legal framework for the IT and BPM industry

April 2024

Knowledge Partner

Nishith Desai Associates



nasscom

Nasscom represents the voice of over \$250 billion technology industry in India with the vision to establish the nation as the world's leading technology ecosystem. Boasting a diverse and influential community of over 3000 member companies, our network spans the entire spectrum of the industry from DeepTech and AI start-ups to multinationals and from products to services, Global Capability Centres to Engineering firms. Guided by our vision, our strategic imperatives are to accelerate skilling at scale for future-ready talent, strengthen the innovation quotient across industry verticals, create new market opportunities - both international and domestic, drive policy advocacy to advance innovation and ease of doing business, and build the industry narrative with a focus on Trust, and Innovation. And, in everything we do, we will continue to champion the need for diversity and equal opportunity.

Write to us at policy@nasscom.in or visit us at X for updates [@NasscomPolicy](https://twitter.com/NasscomPolicy).



At Nishith Desai Associates, we have earned the reputation of being Asia's most Innovative Law Firm – and the go-to specialists for companies around the world, looking to conduct businesses in India and for Indian companies considering business expansion abroad. We are a research and strategy driven international firm with offices in Mumbai, Palo Alto (Silicon Valley), Bengaluru, Singapore, New Delhi, GIFT City, Munich, and New York. The firm has been consistently ranked as one of the Most Innovative Law Firms across the globe. In fact, NDA has been the proud recipient of the Financial Times-RSG award 4 times in a row, (2014-2017) as the Most Innovative Indian Law Firm.

Visit us at www.nishithdesai.com or write us at concierge@nishithdesai.com.

Disclaimer

This Handbook does not purport to be exhaustive or conclusive. It does not constitute a legal advice or opinion, and it should not be relied upon by any person for any purpose, nor is it to be quoted or referred to in any public document or shown to, or filed with any government authority, agency, or other official body without our consent. We are relying upon relevant provisions of the Indian laws, and the rules thereunder, and the judicial and administrative interpretations thereof, which are subject to change or modification by subsequent legislative, regulatory, administrative, or judicial action or decisions.

Usage of Information

The material in this publication is copyrighted. No part of this Handbook may be reproduced either on paper or electronic media without permission in writing from nasscom. Request for permission to reproduce any part of the Handbook may be sent to nasscom. Forwarding/copy/using in publications without approval from nasscom will be considered as infringement of intellectual property rights.

Preface

India's economic growth and development are inextricably linked to the productivity and well-being of its workforce. As the nation continues its upward trajectory, the importance of progressive labour laws that safeguard workers' rights while fostering a conducive business environment cannot be overstated. The Indian government's recent enactment of four Labour Codes marks a landmark reform in this direction, aimed at streamlining and modernising the country's labour regulations.

This Handbook on Labour Codes (**Handbook**) has been designed to serve as a comprehensive guide to the key changes introduced by these newly enacted labour laws, with a particular focus on the Information Technology and Business Process Management (IT-BPM) sector. The IT-BPM industry, a driving force behind India's remarkable economic progress, has unique workforce requirements and dynamics that necessitate a nuanced understanding of the relevant labour regulations.

Through this Handbook, we aim to provide a concise, yet thorough overview of the provisions outlined in the four Labour Codes, namely the Code on Wages, the Code on Social Security, the Code on Industrial Relations, and the Code on Occupational Safety, Health and Working Conditions. By distilling the intricate legal provisions into practical insights, we endeavour to equip businesses with the knowledge required to navigate the evolving labour landscape effectively.


Moreover, this Handbook recognises the pivotal role of stakeholder collaboration in shaping a robust and inclusive labour ecosystem. We extend an invitation to industry professionals, policymakers, and subject matter experts to share their valuable feedback to contribute to the discourse that nurtures economic growth while prioritising the welfare of workers.

It is our sincere hope that this Handbook will serve as a valuable resource for businesses operating in the IT-BPM sector, enabling them to align their practices with the newly enacted labour laws seamlessly.

We wish to convey special thanks to our knowledge partner, Nishith Desai Associates for helping us to create this Handbook.

Table of Contents

Introduction	9
Code on Wages, 2019	12
Code on Social Security 2020	18
Occupational Safety, Health and Working Conditions Code, 2020	26
Industrial Relations Code, 2020	36
Glossary of relevant definitions	43



Introduction

India has embarked on its biggest labour law reform - consolidating 29 national level labour laws into 4 codes - Code on Wages, 2019; Code on Social Security, 2020; Occupational Safety, Health, and Working Conditions Code, 2020; Industrial Relations Code, 2020 (**Labour Codes**). The new legislation impacts all employers, irrespective of their size, along with their employees, irrespective of their title, role, or salary.

The Constitution of India provides for a federal structure whereby the union and the State legislatures have the power to make laws with respect to the matters mentioned in the Concurrent List of the Seventh Schedule. 'Labour' and such related matters are covered under the Concurrent List. In a bid to simplify the labour compliances and to increase the ease of doing business in India, the union government has codified 29 union-level labour laws into 4 Labour Codes. These are:

1. **Code on Wages, 2019 (Wage Code):** replaces the four existing labour laws and aims to standardise wage provisions. Few prominent provisions introduced are the statutory concept of floor wage and the redefinition of the concept of 'wages'. The Wage Code envisages a progressive regime by requiring employers to ensure equal remuneration for individuals performing similar work irrespective of their gender. It empowers the government to set minimum wages and establish advisory boards for wage-related recommendations.
2. **Code on Social Security, 2020 (SS Code):** aims at providing social security benefits to worker. It amalgamates and replaces nine existing social security laws. SS Code also establishes a central authority for implementing and monitoring social security schemes.

3. **Occupational Safety, Health, and Working Conditions Code, 2020 (OSH Code):** focuses on ensuring a safe and healthy working environment for employees. OSH Code consolidates and replaces 13 existing laws, introducing provisions for risk assessment, preventive measures, and reporting of workplace accidents. It also emphasises the duty of employers in relation to terms and conditions of employment like leaves, daily and weekly working hours and safe working environment.
4. **Industrial Relations Code, 2020 (IR Code):** subsumes three existing statutes and provides a framework for the negotiation and settlement of disputes between employers and employees. Few significant provisions include the formation and recognition of trade unions & negotiating union, collective bargaining, and grievance redressal mechanisms.

Although the Labour Codes have been enacted and published in the official Gazette of India (date of publication - Wage Code: October 08, 2019; SS Code, OSH Code and IR Code: September 29, 2020) after they received assent from the President of India, substantive provisions of the Labour Codes are yet to be made effective. Besides, each Code authorises the appropriate government to make rules on certain subject matters specified in the codes. This could be State Government or Central Government depending on the context. While the Central Government and many State Governments such as Maharashtra, Gujarat, Karnataka, Telangana, Tamil Nadu, Haryana etc. have notified draft rules under the Codes, the final rules are yet to be notified.

How to read the Handbook

This Handbook attempts to provide an overview of key changes brought about to Indian labour laws by the newly enacted Labour Codes. Please note the following:

- We have simplified the definitions given under these Codes to the extent we have insight on how the extant laws are interpreted.
- For new definitions introduced under Labour Codes, we have stuck to the legal language, since this is subject to interpretation by courts and legislature.
- To better explain the provisions, we have given additional explanation in footnotes, wherever it is needed and possible.
- For ease of reference, the Handbook has been divided into 4 chapters – one for each code, i.e., Wage Code, SS Code, OSH Code and IR Code.
- At the end of each Chapter, we have briefly listed important matters to be provided under the State/Central rules to each code.
- Under each code, there is a tabular representation of the said code divided into 4 columns:

Column 1 | Provision: It lists the important definitions and provisions.

Column 2 | Section number: It mentions the section of provision covered under the previous column.

Column 3 | New or revised provision: It discusses whether the said provision is an entirely new concept or a modified version of the existing conditions.

Column 4 | Impacted parties: It provides a high-level analysis of the possible impact of the relevant provision in terms of compliance or cost obligations and link it to the relevant stakeholders, like payroll, finance, or human resources.

- In the table under each code, the column for a new provision is highlighted in **yellow** and the column on revised provision is highlighted in **green**.
- At the end of the Handbook, there is a section on Glossary of key important definitions extracted from the relevant codes.
- The Handbook does not cover laws, like Shops and Commercial Establishment laws governed under State laws because the same have not been subsumed into the Labour Code.

Code on Wages, 2019

Laws covered by Wage Code:

1. Payment of Wages Act, 1936
2. Minimum Wages Act, 1948
3. Payment of Bonus Act, 1965
4. Equal Remuneration Act, 1976

The Wage Code will repeal and replace these laws once its provisions are made effective.

The Wage Code was published in the official Gazette of India on August 08, 2019, after it received assent from the President of India.

S No.	Provision	Relevant Section of Wage Code	New Provision or Revision	Impacted Parties
DEFINITIONS				
1	<p>Definition of ‘wages’¹: The Wage Code (and other labour codes) introduces a uniform definition of “wages”. The definition of wages is to be considered for calculation of minimum wages, provident fund (PF) contributions, Employee State Insurance (ESI), maternity benefit, employee’s compensation, gratuity, statutory bonus, and other payment of wage related provisions.</p> <p>This change in definition of wages does not impact provisions under state specific statutes such as shops and establishments statutes, labour welfare fund statutes, professional tax statutes, etc.</p>	Section 2(y) and 3	<p>Revision: The labour codes provide a uniform definition of wages which was different under the erstwhile labour laws.</p>	<p>Relevant to all employers and employees²</p> <p>Stakeholders: Finance & Payroll</p> <p>Important for understanding financial impact on wage related benefits such as gratuity.</p>

¹ This is common for all labour codes.

² There is no specific threshold of applicability of wage code provisions. Hence, it is applicable to all employers and employees.

S No.	Provision	Relevant Section of Wage Code	New Provision or Revision	Impacted Parties
2	<p>Definition of ‘employee’³:</p> <p>Wage Code defines an ‘employee’ as any person (other than an apprentice engaged under the Apprentices Act, 1961), employed on wages by an establishment to do any skilled, semi-skilled or unskilled, manual, operational, supervisory, managerial, administrative, technical, or clerical work for hire or reward, whether the terms of employment be express or implied.</p>	Section 2(k)	<p>Revision: The Payment of Wages Act, 1936 provisions are typically not applicable to employees drawing monthly wages above INR 24,000. However, the Wage Code provisions are applicable to all ‘employees’.</p>	<p>Relevant to all employers and employees</p> <p>Stakeholders: Finance, Payroll & HR</p> <p>Important for understanding the net of coverage of Wage Code.</p>
3	<p>National Floor Wage:</p> <p>A new concept of national floor wage has been introduced. A national floor wage to be fixed by the Central Government basis which the appropriate State Government will have to fix the minimum wage rates.</p>	Section 9	<p>New Provision. Earlier, only minimum wages were notified by the relevant State and Central Government. Now, the Central Government will notify national floor wages which States will keep in mind while notifying their respective minimum wages.</p>	<p>Relevant to all employers and employees</p> <p>Stakeholders: Finance & Payroll</p> <p>Important for understanding minimum obligations towards employees, and services received through contract workers.</p>
EMPLOYER OBLIGATIONS/ COMPLIANCES				
4	<p>Prohibition of discrimination on ground of gender:</p> <p>Employer to ensure that there is no discrimination among employees on the basis of <u>gender</u> in matters relating to wages for the same work or work of similar nature.</p>	Section 2(y)	<p>Revision: The obligation to pay equal remuneration to male and female employees for same work or work of similar nature have been extended to all genders in respect of conveyance allowance, house rent allowance and any remuneration payable under an award or settlement.</p>	<p>Relevant to all employers</p> <p>Stakeholders: Finance, Payroll & HR</p> <p>Important for ensuring wage breakup is computed accordingly.</p>
5	<p>Payment of due wages within two working days of resignation:</p> <p>The employer will have to pay the due wages within 2 working days from the last day of employment even in cases of employee resignation.</p>	Section 17	<p>Revision: The prescribed timeline for payment of wages, which was applicable only to cases of termination, has been extended to cases of resignation as well.</p>	<p>Relevant to all employers</p> <p>Stakeholders: Payroll & Compliance</p> <p>Important for understanding payment timelines and compliances for deductions.</p>

³ This is common for all labour codes. Please see: India’s New Labor Codes: Comparison of Employee v. Worker: <https://www.natlawreview.com/article/india-s-new-labor-codes-comparison-employee-v-worker>.

S No.	Provision	Relevant Section of Wage Code	New Provision or Revision	Impacted Parties
6	<p>Compliances for payment of wages:</p> <p>Employer to comply with certain conditions on payment of wages, including time of payment of wages and authorised deductions (for example deductions for fines, recovery of salary advance, etc.).</p>	Section(s) 16, 17 and 18	<p>Revision: These provisions were primarily applicable under Payment of Wages Act, 1936 to employees earning monthly wages below INR 24000.</p> <p>Under the Wage Code there is no such threshold, and accordingly, these compliance requirements will apply to all employees.</p>	
7	<p>Approval for fines:</p> <p>Employer to obtain prior approval of the appropriate government (relevant government authority for the employer's establishment – typically State Government for private employers) regarding imposition of any fines on an employee. For instance, a penalty imposed by the employer on employee as a result of a misconduct.</p>	Section 19		
8	<p>Payment of wages by electronic mode:</p> <p>Wage Code recognises payment of wages in electronic mode. For the first time, electronic payment has been statutorily recognised in labour laws.</p>	Section 15	New Provision	<p>Relevant to all employers</p> <p>Stakeholder: Payroll</p> <p>Payments can be made electronically.</p>
9	<p>Payment of bonus:</p> <p>Employer is required to pay an annual minimum bonus calculated at a minimum of 8.33% of the annual wages to eligible employees and a maximum of 20% of such wages.</p> <p>Employees dismissed from services due to conviction for sexual harassment are disqualified from receiving payment of statutory bonus.</p>	Section(s) 26 and 29	<p>Revision: The government is yet to announce the salary threshold for statutory bonus eligibility which may increase the net of bonus obligations.</p>	<p>Relevant to all employees earning 'wages' below the notified wage threshold. Wage threshold shall be notified by the Central Government.</p> <p>Stakeholder: Finance & Payroll</p> <p>Important for determining statutory bonus liability.</p>

S No.	Provision	Relevant Section of Wage Code	New Provision or Revision	Impacted Parties
DISPUTE RESOLUTION AND STATUTORY AUTHORITIES				
10	<p>Limitation period to file claims:</p> <p>The period of limitation for filing of claims by a worker has been enhanced to 3 years. For example, under Payment of Wages Act, 1936 claims in relation to unlawful deductions could be filed within 12 months from the date of the deduction.</p>	Section 45	<p>Revision: Limitation period enhanced under the Wage Code for filing of claims on non-compliances. For example, under Payment of Wages Act, 1936, application for illegal deductions from wages or delayed payments can be presented to relevant labour authorities for adjudication within 12 months from date of deduction or due payment. Under the Wage Code, such applications may be filed within a period 3 years from the date on which the claim arises.⁴</p>	<p>Relevant to all employers and employees</p> <p>Stakeholder: Legal</p> <p>Important for determining time-barred claims.</p> <p>For example, if an employee files a claim of wrongful deduction from wages under Wage Code after 3 years from the date of deduction, such a claim may be time-barred.</p> <p>However, Wage Code permits labour authorities to admit time barred claims in case there is sufficient reason for delay.</p>
11	<p>Inspector cum facilitator⁵ :</p> <p>Role of labour authorities has been extended beyond just inspection, to include facilitation of compliances.</p> <p>In case of any violation of certain Wage Code provisions (such as wrongful deduction from wages, non-maintenance of registers etc.), the Inspector-cum-Facilitator shall give an opportunity to the employer to rectify such non-compliance prior to initiating action.</p> <p>In case of repetition of an offence within 5 years from the date of first violation, the employer will not be provided with such opportunity.</p> <p>The appropriate government may lay down an 'inspection scheme' which may provide for web-based inspection and calling of online information.</p>	Section 51 and 54	New provision	<p>Relevant to all employers</p> <p>Stakeholders: Legal & Compliance</p> <p>Important to understand potential liabilities in case of non-compliances and labour audit process.</p>

⁴ Since the Labour Codes replace multiple laws, we have not included all old limitation period limits for ease of reference.

⁵ This is common for all labour codes.

S No.	Provision	Relevant Section of Wage Code	New Provision or Revision	Impacted Parties
12	<p>Increased penalties for non-compliance:</p> <p>The employer may be penalised for paying less than the due wages or contravening any other provisions of the Wage Code. The penalties include:</p> <p>Paying less than the due wages:</p> <ul style="list-style-type: none"> - Max. penalty for first offence: Fine of INR 50,000 - Max. penalty on repetition of offence within 5 years of previous offence: Imprisonment of 3 months and/or fine of INR 1,00,000 <p>Contravention of other provisions of Wage Code:</p> <ul style="list-style-type: none"> - Max. penalty for first offence: Fine of INR 20,000 - Max. penalty on repetition of offence within 5 years of previous offence: Imprisonment of 1 month and/or fine of INR 40,000 <p>For any default in payment of wages, minimum wages, bonus, etc. compensation awarded could be up to 10 times the value of claim.</p>	Section 54 and 45	<p>Revision: Penalties under subsumed laws have been revised.⁶ For example, as per Payment of Bonus Act, 1965 non-payment of bonus is punishable with imprisonment of up to 6 months and/or fine of up to INR 1000. The Wage Code provides for a monetary penalty of up to INR 20,000 for first offence of non-payment of bonus.</p>	<p>Relevant to all employers</p> <p>Stakeholders: Legal & HR</p> <p>Important for understanding potential liabilities in case of non-compliance.</p>
13	<p>Composition of offences:</p> <p>The Wage Code permits composition of offences⁷ (which are not punishable with imprisonment). Employers who are convicted of such offences for the first time may need to pay up to 50% of the maximum penalty provided for composition. Once an offence is compounded, no prosecution⁸ will be instituted against the offender for that offence.</p>	Section 56	New provision	<p>Relevant to all employers</p> <p>Stakeholders: Finance and Legal</p> <p>Important for understanding potential liabilities in case of non-compliance.</p>

⁶ Since the Labour Codes replace multiple laws, we have not included all old penalty limits for ease of reference.

⁷ Composition means reduction of penalty through payment of fine.

⁸ In case of composition of an offence, legal proceedings will not be initiated in the court of law for committing a crime.

Important matters to be provided under the State/Central rules to Wage Code:

- **Daily/ weekly working hour limits beyond which overtime payments will apply.**
.....
- **Working hours of certain classes of employees (such as employees engaged in unforeseen emergency work outside of normal working hours)**
.....
- **Daily spread-over limits for employees.**
.....
- **Weekly day of rest**

Code on Social Security 2020

Laws covered by SS Code:

1. Employee's Compensation Act, 1923
2. Employees' State Insurance Act, 1948
3. Employees' Provident Funds and Miscellaneous Provisions Act, 1952
4. Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959
5. Maternity Benefit Act, 1961
6. Payment of Gratuity Act, 1972
7. Cine-Workers Welfare Fund Act, 1981
8. Building and Other Construction Workers' Welfare Cess Act, 1996
9. Unorganised Workers' Social Security Act, 2008

The SS Code will repeal and replace these laws once its provisions are made effective.

The SS Code was published in the official Gazette of India on September 29, 2020, after it received the assent from the President of India.

S No.	Provision	Relevant Section of Wage Code	New Provision or Revision	Impacted Parties
DEFINITIONS				
1	<p>Aggregators</p> <p>SS Code defines aggregators in context of gig and platform workers. It states that an aggregator means a digital intermediary or a market-place for a buyer or user of a service to connect with the seller or the service provider</p>	Section 2(2)	New provision	<p>Relevant to aggregators⁹.</p> <p>Stakeholders: Finance & HR</p> <p>Important in context of social security for gig and platform workers.</p>

⁹ Aggregators may include those engaged in the business of ride sharing services (for example - Ola, Uber), food and grocery delivery services (for example - Zepto, Zomato, Swiggy), logistic services (for example - delhivery), e-market place (for example - Udaan, Amazon), professional service provider (for example - urban company), healthcare (for example - practo), travel and hospitality (for example - makemytrip) and content and media services (for example - Spotify) etc.

S No.	Provision	Relevant Section of Wage Code	New Provision or Revision	Impacted Parties
2	<p>Gig-workers</p> <p>SS Code introduces the concept of ‘gig-worker’ who is a ‘person who performs work or participates in a work arrangement and earns from such activities outside of traditional employer-employee relationship’. This may include independent contractors.¹⁰</p>	Section 2(35)	New provision	<p>Relevant to gig workers, aggregators engaging gig workers.</p> <p>Stakeholders: Finance & HR</p> <p>Important for aggregators engaging gig workers.</p>
3	<p>Platform workers</p> <p>SS Code introduces the concept of platform workers who undertake ‘platform work’. Platform work’ means any work arrangement outside of a traditional employer employee relationship in which organisations or individuals can use an online platform to access or provide specific services against payment. Platform work covered under SS Code may be notified by the Central Government.</p>	Section(s) 2(60) and 2(61)	New provision	<p>Relevant to platform workers, aggregators engaging platform workers.</p> <p>Stakeholders: Finance & HR</p> <p>Important for aggregators engaging platform workers</p>
4	<p>Fixed-term employment</p> <p>SS Code defines the fixed-term employment to mean ‘engagement of an employee on the basis of a written contract of employment for a fixed-period’. It also provides that:</p> <ul style="list-style-type: none"> - Hours of work, wages, allowances and other benefits of fixed-term employees should not be less than that of a permanent employee doing same work or work of a similar nature. - Fixed term employees shall be eligible for all statutory benefits available to a permanent employee or a pro-rata basis, irrespective of qualifying criteria prescribed under the applicable law. For example, gratuity will be payable to fixed term employees with less than 5 years of service. 	Section 2(34)	New provision: Similar definition was introduced in the <u>Industrial Employment (Standing Orders) Central Rules, 1946</u> and by some states (such as <u>Haryana, Karnataka</u>) in their respective state rules to the Industrial Employment (<u>Standing Orders) Act, 1946</u> and model standing orders.	<p>Relevant to fixed term employees and employers engaging such employees.</p> <p>Stakeholders: Finance, Payroll & HR</p> <p>Important to ensure fixed-term employees are provided relevant pro-rata benefits, including statutory benefits such as gratuity.</p>

¹⁰ Independent contractors engaged for provision of specific services, who are not platform workers, are likely to be considered as gig workers.

S No.	Provision	Relevant Section of Wage Code	New Provision or Revision	Impacted Parties
5	<p>Career centre</p> <p>SS Code introduces concept of career centres replacing employment exchanges. They are offices (including employment exchanges¹¹, places, or portals) established and maintained by the Central Government for providing career services by maintaining information on recruiting employers, candidates seeking recruitment, occurrence of vacancies and individuals seeking vocational guidance or counselling to start self-employment etc.</p>	Section 2(9)	<p>Revision: Through the SS Code, the role of employment exchanges under Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 (EE Act) has been extended to provide vocational guidance and counselling for self-employment.</p> <p>Private employers employing at least 25 employees are required to notify certain vacancies to employment exchanges under EE Act. Non-compliance with EE Act may lead to a monetary penalty of up to INR 1000, whereas under SS Code, failure to report vacancies (as may be notified by the labour authorities) to career centres may lead to a monetary penalty of up to INR 50,000.</p>	<p>Relevant to employers and job seekers</p> <p>Stakeholders: HR & Compliance</p> <p>Employers may be mandatorily required to notify certain vacancies to career centres.</p>
EMPLOYER OBLIGATIONS/ COMPLIANCES				
6	<p>Social Security Schemes for gig and platform workers</p> <p>The Central Government has been empowered to notify social security schemes for gig workers, platform workers and members of their families. Amounts due under such social security schemes shall have priority over other debts of the employer.</p> <p>The Code proposes to set up a National Social Security Board (NSSB) which shall perform the functions like, recommendation to the Central Government for framing suitable social security schemes for different sections of unorganised workers, gig workers and platform workers.</p>	Section 45 and Section 47	New Provision	<p>Relevant to gig workers and platform workers</p> <p>Stakeholders: Finance & HR</p> <p>Aggregators may need to make social security contributions for engaging gig workers and platform workers.</p> <p>We await more details on applicability of the scheme and obligation of employers which will be available as and when the schemes are notified.</p>

¹¹ Currently there are laws which require private employers having 25 or more employees to report certain vacancies within their establishments to employment exchanges. Once the SS Code rules are notified, it will be clear what will be considered as reportable vacancies to career centres.

S No.	Provision	Relevant Section of Wage Code	New Provision or Revision	Impacted Parties
	Given the State Government shall have representation on NSSB monitoring welfare schemes for gig workers, they can make recommendations regarding the scheme framed by the Central Government.			
7	<p>Electronic registration:</p> <p>Every establishment to which the SS Code applies needs to be registered, electronically or otherwise in a prescribed manner.</p> <p>If the establishment is already registered under any existing central labour law, it shall not be required to obtain registration again under the SS Code. Such existing registration shall be deemed to be registration for the purposes of the SS Code.</p>	Section 3	<p>Revision: There are existing registration requirements under laws such as Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and Employees' State Insurance Act, 1948 which were triggered when an employer exceeded a certain headcount.</p> <p>An employer who is already registered under existing laws need not obtain fresh electronic registration under the SS Code. Otherwise, a new registration needs to be obtained.</p>	<p>Relevant to employers</p> <p>Stakeholders: HR & Compliance</p> <p>Important to ensure the employer's establishment is registered under SS Code once such requirement becomes applicable.</p>
8	<p>Calculation of PF, gratuity, maternity benefit, compensation of workplace accidents:</p> <p>Calculation based on the new definition of wages, subject to applicable caps as may be prescribed by the appropriate government.</p>	Section 2(88)	<p>Revision: Social security obligations may vary based on the revised definition of wages. For example: gratuity is currently calculated only upon basic salary and DA, which will be now calculated upon 'wages' under SS Code.</p>	<p>Relevant to all employers and employees. Impact will vary based on the nature of the benefit and employees entitled to receive such benefits.</p> <p>Stakeholders: Finance, Payroll & HR</p> <p>Employers will need to understand what will constitute 'wages' based on their salary structure and accordingly, the change in their obligations.</p>

S No.	Provision	Relevant Section of Wage Code	New Provision or Revision	Impacted Parties
9	<p>Voluntary PF and ESI coverage: PF and ESI authorities on receiving application from an employer (or otherwise by notification) can apply PF and ESI related chapters of SS Code to the employer's establishment, subject to there being agreement among majority of the employees.</p> <p>Employer can apply to come out of such voluntary application, if there is an agreement in this respect with majority of employees, complying with applicable conditions imposed by relevant authorities.</p>	Section 1(5) and 1(7)	New provision: Currently there is no provision to come out of voluntary coverage.	<p>Relevant to all employers and employees¹²</p> <p>Stakeholders: Finance, Legal & HR</p> <p>Important for employers who would like to take voluntary PF and ESI coverage.</p>
10	<p>Recovery of ESI dues from employer: Where employer fails to pay ESI contribution for an employee as per legal requirement, the ESI authorities can provide the ESI related benefits to such employees directly, recovering the capitalised value of the benefits from the employer in a prescribed manner.¹³</p>	Section 42	New provision	<p>Relevant to employers and employees eligible to receive ESI benefits.</p> <p>Stakeholders: Finance & Legal</p> <p>Important in case employer is not making ESI compliance for eligible employees</p>
11	<p>Gratuity for fixed-term employees: Gratuity to be paid on pro-rata basis to fixed term employees irrespective of their length of service.</p>	Section 53	New provision	<p>Relevant to employers and fixed term employees</p> <p>Stakeholders: Finance, Payroll & HR</p> <p>Important for assessing gratuity liability.</p>
DISPUTE RESOLUTION AND STATUTORY AUTHORITIES				
12	<p>Limitation of 5 years for PF & ESI proceedings: No proceeding can be initiated after 5 years from the date of cause of action¹⁴ in respect of applicability of PF/ESI provisions or non-payment of PF/ESI dues.</p>	Section 125	New provision	<p>Relevant to employers and employees</p> <p>Stakeholders: Legal</p> <p>Important for determining limitation of claims</p>

¹² SS Code does not prescribe minimum number of employees for voluntary coverage.

¹³ Capitalised value is not defined under SS Code. The meaning of capitalised value will be better understood once the law becomes effective and is implemented. Prescribed manner means the manner in which this provision will need to be implemented as per rules that will be notified under SS Code.

¹⁴ Date of cause of action means the date on which the liability is accrued. For example- damages and interests are calculated based on the date of the late payment of PF/ ESI dues. The cause of action for such damages and interest payments is the date on which there is a default in payment.

S No.	Provision	Relevant Section of Wage Code	New Provision or Revision	Impacted Parties
	<ul style="list-style-type: none"> - Inquiries on such matters should be concluded within a period of 2 years. - Pending inquiries should be concluded within a period of 2 years from the date of commencement of the SS Code. 			
13	<p>Joint-liability of transferor-transferee in case of transfer of establishment:</p> <p>Where an employer transfers his establishment in whole or in part, the employer and the transferee shall be jointly and severally liable to pay any due amount in respect of any liabilities under the SS Code. The liability referenced here shall be in respect of the period prior to the date of transfer. The liability of the transferee shall be limited to the value of the assets obtained by him by such transfer. For example, A transfers a part of its business to B and A has unpaid dues under SS Code as on the date of transfer. In such case, both A and B shall be liable jointly and individually for such unpaid dues accrued until date of transfer. However, B's liability in respect of such pre-transfer dues shall be limited to the value of the assets transferred to B.</p>	Section 145	Revision: Currently, only the PF law contemplates joint liability of the parties in case of employee transfer. The SS Code extends such joint and several liability to other social security obligations under the SS Code. For example: payment of unpaid gratuity.	<p>Relevant to employers transferring businesses.</p> <p>Stakeholders: Legal</p> <p>Important in case of transfer of employees and allocation of liabilities between the parties.</p>
14	<p>Increased penalties for non-compliance:</p> <p>Max. penalty for failure to pay contribution deducted from employee's wages: imprisonment of 3 years and/or fine of INR 1,00,000.</p> <p>There are additional penalties for other non-compliances such as:¹⁵</p> <ul style="list-style-type: none"> - non-payment of social security benefits (such as gratuity, maternity benefit, cess for building workers, compensation in case of a workplace related accident etc.) - Reduction of an employee's benefits in non-compliance with provisions of SS Code - Failure to file/ submit returns and other information as per requirement under SS Code - Filing false returns 	Section(s) 133 and 134	Revision: SS Code provides for higher monetary penalties for non-compliance with social security obligations.	<p>Relevant to employers</p> <p>Stakeholders: Legal, Finance & Compliance</p> <p>Important for determining liabilities for non-compliance.</p>

¹⁵ Only key takeaways of the penalty provision have been highlighted.

S No.	Provision	Relevant Section of Wage Code	New Provision or Revision	Impacted Parties
	<p>- Non-compliance with provisions of SS Code for which there is no specific penalty.</p> <p>Penalties for failure to pay social security benefits or obstructing labour authorities are typically in nature of imprisonment and/or monetary penalties of varying ranges.</p> <p>Second or subsequent offence for payment of contribution/ charges/ cess/ maternity benefit/ gratuity/ compensation may be penalised with imprisonment of up to 3 years and/or fine of up to INR 3,00,000.</p>			
15	<p>Compounding of offences:</p> <p>The SS Code permits the compounding of certain offences (in case of first convictions) in following manner-</p> <p>a for an offence punishable with fine only: with payment of 50% of the maximum fine provided for that offence;</p> <p>b for an offence punishable with imprisonment for a term which is not more than 1 year and also with fine: with payment of 75% of the maximum fine provided for that offence.</p> <p>Once an offence is compounded, no prosecution will be instituted against the offender for that offence.</p>	Section 138	New provision	<p>Relevant to employers</p> <p>Stakeholders: Legal & Compliance</p> <p>Important for determining employer's liability in case of non-compliance.</p>

Important matters to be provided under the State/Central rules to SS Code:

- **Gratuity for fixed-term employees.**
.....
- **Creche facility.**
.....
- **Different social security schemes for gig-workers, platform workers, unorganised sector workers, building and other construction workers and for PF, ESI are yet to be notified. The Central Government has notified certain provisions of the SS Code relating to Employees' Pension Scheme, 1995 bringing the scheme under the ambit of SS Code.**

Occupational Safety, Health and Working Conditions Code, 2020



Laws covered by OSH Code:

1. Factories Act, 1948
2. Plantations Labour Act, 1951
3. Mines Act, 1952
4. Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955
5. Working Journalists (Fixation of Rates of Wages) Act, 1958
6. Motor Transport Workers Act, 1961
7. Beedi and Cigar Workers (Conditions of Employment) Act, 1966
8. Contract Labour (Regulation and Abolition) Act, 1970
9. Sales Promotion Employees (Conditions of Service) Act, 1976
10. Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979
11. Cine-Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981
12. Dock Workers Safety (Safety, Health, and Welfare) Act, 1986
13. Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1966

The OSH Code will repeal and replace these laws once its provisions are made effective.

The OSH Code was published in the official Gazette of India on September 29, 2020, after it received the assent from the President of India.

S No.	Provision	Relevant Section of OSH Code	New Provision or Revision	Impacted Parties
DEFINITIONS				
1	<p>Establishment:</p> <p>Establishment for the purpose of OSH Code includes a place where any industry, trade, business, manufacturing, or occupation is carried on in which 10 or more workers are employed, thereby, including commercial establishments within the ambit of the term “establishment” under OSH Code.</p>	Section 2 (v)	<p>Revision: Common definition for establishment covering commercial establishments with at least 10 or more workers.</p>	<p>Relevant to workers & Employers of Establishments</p> <p>Stakeholders: Legal & HR</p> <p>Important for understanding applicability of OSH Code provisions.</p>
2	<p>Workers¹⁶:</p> <p>Similar to ‘workman’ under Industrial Disputes Act, 1947, the OSH code defines workers as ‘person employed in any establishment to do any manual, unskilled, skilled, technical, operational, clerical, or supervisory work for hire or reward, whether the terms of employment be express or implied.</p> <p>It also includes working journalists and sales promotion employees.</p> <p>However, it excludes the following categories:</p> <ul style="list-style-type: none"> (i) Persons from air force, army, navy, police service, prison officer or employee. (ii) Employed mainly in a managerial or administrative capacity;¹⁷ (iii) Employed in a supervisory capacity drawing wage exceeding INR 18000 per month or an amount as may be notified by the Central Government from time to time; 	Section 2(zzl)	<p>Revision: The definition of workers as per Industrial Disputes Act, 1947 respectively has been revised. Supervisors earning monthly wages above INR 18000 will be included under ‘workers’.</p>	<p>Relevant to workers & employers</p> <p>Stakeholders: Legal & HR</p> <p>Important for understanding applicability of OSH Code provisions.</p>

¹⁶ This is common for all Labour Codes. Please see: India’s New Labor Codes: Comparison of Employee v. Worker: <https://www.natlawreview.com/article/india-s-new-labor-codes-comparison-employee-v-worker>.

¹⁷ We have used the language used in the OSH Code as we are yet to see how it will be interpreted. In practice, courts continue to interpret who can be included as a workman and who cannot be, based on the facts of each case.

S No.	Provision	Relevant Section of OSH Code	New Provision or Revision	Impacted Parties
3	<p>Contract labour: "Contract labour" under OSH Code includes workers engaged through a contractor in connection with work of an establishment. It includes migrant workers and part-time employees of contractors but does not include workers:</p> <ul style="list-style-type: none"> - who are regularly employed by a contractor for any activity of the contractor's establishment and - whose employment (including permanent employment) is governed by mutually accepted conditions of employment and - who gets periodical increments, social security coverage and other welfare benefits as per applicable laws. <p>In view of such exclusion, certain individuals who were earlier considered as contract labour under the Contract Labour (Regulation and Abolition) Act, 1970 (for example: permanent employees of a contractor receiving increment, social security coverage from contractor and providing on-site services to a client) will not be considered as contract labour under the OSH Code.</p>	Section 2(m)	Revision: The definition of contract labour has been made narrower, excluding certain employees of third-party vendors, reducing liability of principal employer towards such individuals.	Relevant to contract labour, contractors & principal employers Stakeholders: Legal & HR Important for understanding applicability of OSH Code provisions.
4	<p>Core activity of an establishment: The OSH Code has defined the core activity of an establishment as activities for which an establishment is set up, including any activity essential or necessary to such activity. The OSH Code specifically excludes certain activities from the ambit of core activities. Engagement of contract labour in core activities¹⁸ is specifically prohibited under the OSH Code, except where:</p> <ul style="list-style-type: none"> i. the activity is ordinarily done through a contractor in course of normal functioning of the employer's establishment, ii. the activities are such that they do not require full time workers for the major portion of the working hours in a day or for longer periods, as the case may be, iii. there is a sudden increase in the volume of work in the core activity that needs to be accomplished in a specified time. 	Section 2(p)	New provision	Relevant to contract labourers, contractors & principal employers Stakeholders: Legal & HR Important for understanding applicability of OSH Code provisions.

¹⁸ Non-core activities may include housekeeping, security, and pantry services. Whether the activities fall within the category of core activities and thereby attract the exceptions will be based on the facts of each case.

S No.	Provision	Relevant Section of OSH Code	New Provision or Revision	Impacted Parties
5	<p>Inter-state migrant workers:</p> <p>The definition of ‘inter-state migrant worker’ includes workers who come on their own from their home state to obtain employment in an establishment located in another state (besides from those recruited by contractors for work in a state different from their home state), or subsequently changes establishment within the destination state.</p> <p>This can include such IT/ITeS employees earning wages less than INR 18000 per month, or such higher amount prescribed by the Central Government.¹⁹</p> <p>The above definition is substantially different from the definition of inter-state migrant workers under Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979.</p>	Section 2(zf)	<p>Revision: The ambit of coverage of inter-state migrant worker related provisions have been revised.</p> <p>A wage threshold of INR 18000 has been introduced for inter-state migrant workers.</p> <p>The existing exclusion for individuals in managerial, administrative, and supervisory capacity has been removed.</p>	<p>Relevant to inter-state migrant workers & employers engaging employees belonging to a different state.</p> <p>Stakeholders: Legal & HR</p> <p>Important for understanding the applicability of inter-state migrant worker related provisions.</p>
EMPLOYER OBLIGATIONS				
6	<p>Application of contract labour related provisions:</p> <p>The provisions of the OSH Code pertaining to engagement of contract labours will be applicable to establishments which employ at least 50 contract labourers in the preceding 12 months. Additionally, manpower supply contractors who employ at least 50 contract labour in the preceding 12 months will also be covered under relevant provisions.</p>	Section 45	<p>Revision: The applicability of contract labour-related provisions has been revised. In view of revised definition of ‘contract labour’ and the revised headcount (earlier it was 20 under the central law which has been revised to 50 under OSH Code) trigger, employers will need to re-assess whether contract labour related regulations apply to them.</p>	<p>Relevant to contract labour, contractors & principal employers</p> <p>Stakeholders: HR & Compliance</p> <p>Important for understanding obligations towards contract labourers.</p>
7	<p>Daily working hours:</p> <p>No worker shall be required to work in any establishment for more than 8 hours in a day. Every establishment is required to display a notice of periods of work, during which workers may be required to work.</p>	Section 25	<p>Revision: Provides uniform provisions on wages and working hours for factories and establishments (including IT/ITeS establishments) employing at least 10 workers.</p>	<p>Relevant to workers in establishments</p> <p>Stakeholders: Finance, Payroll, HR & Compliance</p> <p>Important for understanding payment and working hour related compliances.</p>

¹⁹ There was a limit for individuals engaged in managerial, administrative, and supervisory capacity, who are excluded from the term inter-state migrant worker under the existing law i.e., Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979. Under OSH Code there is no such exclusion.

S No.	Provision	Relevant Section of OSH Code	New Provision or Revision	Impacted Parties
8	<p>Overtime wages: Employer will have to pay for overtime work done by any worker at twice the rate of wages, which may be calculated on a weekly or daily basis, as may be favourable to the worker. Employer is required to take consent of the employee for performing overtime work.²⁰</p>	Section 27	Revision: Provides uniform provisions on wages and working hours for factories and establishments (including IT/ITeS establishments) employing at least 10 workers.	<p>Relevant to workers in establishments</p> <p>Stakeholders: Finance, Payroll, HR & Compliance</p> <p>Important for understanding payment and working hour related compliances.</p>
9	<p>Weekly and compensatory holidays: Employer should not allow any worker to work in any establishment for more than 6 days in any one week. If the appropriate government exempts any class of workers from the aforesaid requirement, the worker deprived of weekly holidays shall be allowed compensatory holidays for deprived weekly holidays within the same month or within 2 months thereafter.</p>	Section 26		
10	<p>Prohibition on overlapping of shifts: Employer should not carry out work in any establishment in a system of shifts, whereby more than one relay of workers is engaged in work of the same kind at the same time.²¹</p>	Section 29		
11	<p>Annual leave:</p> <ul style="list-style-type: none"> - Employer to provide workers working for at least 180 days in a calendar year, annual leave with wages @ 1 day for every 20 days of work. - Prefixed or suffixed holidays between a period of leave availed by a worker shall be excluded for purpose of calculation of leave availed by a worker. - Up to 30 days of accrued but un-availed leaves of a worker can be carried over to the succeeding calendar year. - Where a worker has applied for leave and refused, such workers shall be entitled to carry forward the refused leave without any limit. 	Section 32		

²⁰ The details for this will likely be provided in Central or State rules. For instance, the manner of obtaining consent from the employees or whether and how it is to be reported to the State Governments.

²¹ For example, workers cannot be engaged in different shifts for the same work between from 9 am – 5 pm and 2 pm – 10 pm, as there is overlap between shifts. This does not apply if the work is not of the same kind.

S No.	Provision	Relevant Section of OSH Code	New Provision or Revision	Impacted Parties
12	<p>Annual leave encashment: Separating workers, including those separating due to voluntary resignation, are entitled to leave encashment at the time of separation. In such case, leave encashment is payable within 2 days from the date of discharge/ resignation and 2 months where separation is due to death or superannuation.</p> <p>Workers are entitled to on-demand leave encashment at the end of each calendar year if they have accrued leaves. They are also entitled to encashment of any leaves accrued in excess of 30 days.</p>	Section 32	New provision	<p>Relevant to workers in establishments</p> <p>Stakeholders: Finance, Payroll & HR</p> <p>Additional legally mandated separation payment obligation</p>
13	<p>Employment of women in night shift: Women shall be entitled to be employed in all establishments for all types of work, including for work done between 7 PM and 6 AM subject to their consent and compliance with such conditions relating to safety, holidays and working hours or any other conditions as may be prescribed for engagement of women workers during such hours.²²</p> <p>In addition to the above, an employer needs to comply with conditions prescribed for employment of women in night shifts under respective State Shops and Commercial Establishment Acts.</p>	Section 43	Revision: Factories Act, 1948 prohibited engagement of women employees between 7 pm and 6 am which has been permitted for all establishments subject to applicable conditions.	<p>Relevant to women workers</p> <p>Stakeholders: HR & Compliance</p> <p>Important for understanding obligations on engaging female employees in night shift.</p>
14	<p>Obligations related to interstate migrant workers: If the employer employs 10 or more inter-state migrant workers in the preceding 12 months, the employer will need to provide a lump-sum journey allowance to inter-state migrant workers for to and fro journey to the worker's native place to the place of the workers' employment.</p> <p>The minimum service for entitlement to such a journey allowance, periodicity, and class or travel, etc shall be as prescribed by the appropriate State Government under the OSH Code.</p>	Section 61	Revision: Employers may need to extend obligations related to inter-state migrant workers to a larger group of employees.	<p>Relevant to inter-state migrant workers, contractors, and principal employers</p> <p>Stakeholders: Finance, HR & Compliance</p> <p>Important for understanding obligations regarding inter-state migrant workers.</p>

²² This will be prescribed under the rules to OSH Code that will be notified by Central/State Governments.

S No.	Provision	Relevant Section of OSH Code	New Provision or Revision	Impacted Parties
15	<p>New duties of employer introduced:</p> <p>The OSH Code provides for certain duties of an employer such as:</p> <ol style="list-style-type: none"> 1. ensuring the workplace is free from hazards which are likely to cause any injuries or occupational disease to the employees. 2. complying with the occupational safety and health standards as prescribed under the OSH Code or rules and regulations, byelaws or orders thereunder. 3. providing free annual health examinations or such tests to employees of a specific age, or class of employees, or class of establishments as may be prescribed. 4. providing and maintaining a safe and reasonably practical working environment which does not pose a threat to the health of the employees. 5. ensuring safe disposal of hazardous and toxic waste including disposal of e-waste. 6. issuing a letter of appointment to every employee in the establishment with such information and in such form as prescribed. 7. ensuring no charges are levied on any employee in respect of anything done or provided for maintenance of health and safety at workplace 	Section 6	<p>Revision: OSH Code extends certain obligations under Factories Act, 1948 to establishments employing at least 10 workers.</p>	<p>Relevant to employers</p> <p>Stakeholders: HR & Compliance</p> <p>Important for understanding health and safety obligations at the workplace.</p>
16	<p>Certain rights of employees:</p> <p>Employees in an establishment will have the right to obtain from the employer information relating to an employee’s health and safety at work. Employees can also make a representation to the employer in a prescribed manner regarding inadequate provision for protection of the employee’s safety or health in connection with the activities at the employer’s workplace, which can also be escalated to the Inspector-cum-facilitator.</p>	Section 14	<p>Revision: OSH Code extends certain obligations under Factories Act, 1948 to establishments employing at least 10 workers.</p>	<p>Relevant to employees & employers</p> <p>Stakeholders: HR & Compliance</p> <p>This may lead to queries on health and safety at the workplace.</p>

S No.	Provision	Relevant Section of OSH Code	New Provision or Revision	Impacted Parties
17	<p>Notice of certain dangerous occurrences and diseases:</p> <p>In case of any dangerous occurrence in an establishment (whether or not causing bodily injury, or disability), the employer is required to send a notice to appropriate government in a prescribed manner. If a worker in any establishment contracts a notifiable disease (as specified under Third Schedule to the OSH Code), the employer will also need to send a notice to appropriate authorities as may be prescribed.</p>	Section 11 and 12	<p>Revision: OSH Code extends certain obligations under Factories Act, 1948 to establishments (including IT/ITeS establishments) employing at least 10 workers.</p>	<p>Relevant to employers</p> <p>Stakeholders: HR & Compliance</p> <p>This may lead to additional compliances for employers.</p>
18	<p>Welfare facilities in the establishment:</p> <p>Employer to be responsible for provision and maintenance of adequate welfare facilities in the establishment, as prescribed by the Central Government. This may include facilities such as provision of sitting arrangement for all employees, facilities of canteen etc. The obligations would be clear after the Central Government issues notification.</p>	Section 24	<p>Revision: OSH Code extends certain obligations under Factories Act, 1948 to establishments employing at least 10 workers.</p>	<p>Relevant to employers</p> <p>Stakeholders: HR & Compliance</p> <p>This may lead to additional compliances for employers.</p>
DISPUTE RESOLUTION AND STATUTORY AUTHORITIES				
19	<p>Increased penalties for non-compliance:</p> <p>Penalties for contravening provisions of OSH Code include:</p> <ul style="list-style-type: none"> - Maximum fine: INR 5,00,000 - Max. fine for contravention of any order prohibiting, restricting, and regulating employment of women and contract labour: INR 1,00,000. <p>Continuing contravention and subsequent offences may lead to higher penalties.</p>	Section 94, 95, 96, 97, 98, 99, 100, 101, 102 and 103.	<p>Revision: OSH Code provides for monetary penalties for not complying with its provisions. Many provisions under OSH Code were earlier applicable in context of factories and have been extended to commercial establishments employing at least 10 workers.</p>	<p>Relevant to employers</p> <p>Stakeholders: Legal, Finance & Compliance</p> <p>Important for determining liabilities for non-compliance.</p>

S No.	Provision	Relevant Section of OSH Code	New Provision or Revision	Impacted Parties
20	<p>Composition of offences:</p> <p>The OSH Code permits composition of offences (in case of first convictions) in following manner:</p> <ul style="list-style-type: none"> - for an offence punishable with fine only, with payment of 50% of the maximum fine provided for that offence; - for an offence punishable with imprisonment for a term which is not more than 1 year and also with fine, with payment of 75% of the maximum fine provided for that offence. <p>Once an offence is compounded, no prosecution will be instituted against the offender for that offence.</p>	Section 114	New provision	<p>Relevant to employers</p> <p>Stakeholders: Legal, & Compliance</p> <p>Important for determining liabilities for non-compliance.</p>

Important matters to be provided under the State/Central rules to OSH Code:

- Requirement for employers to provide free of cost annual health examinations and employees covered under such requirement.
.....
- Manner of notifying workplace injuries.
.....
- Weekly Working hour limits.
.....
- Overtime payments.
.....
- Conditions of exemption from compensatory time off related requirements.
.....
- Conditions for employment of women at night.
.....
- Exemption from provisions of the OSH Code in relation to working hours.

Industrial Relations Code, 2020

Laws covered by IR Code:

1. Industrial Disputes Act, 1947
2. Industrial Employment (Standing Orders) Act, 1946
3. Trade Unions Act, 1926

The IR Code will repeal and replace these laws once its provisions are made effective.

The IR Code was published in the official Gazette of India on September 29, 2020 after it received the assent from the President of India.

S No.	Provision	Relevant Section	New Provision or Revision	Impacted Parties
EMPLOYER OBLIGATIONS				
1	<p>Grievance Redressal Committee (GRC):</p> <p>Employers in every industrial establishment with 20 or more workers²³ will need to set up one or more GRCs for resolution of disputes arising out of individual grievances.²⁴</p> <p>The GRC shall consist of an equal number of members representing the employer and the workers. The total number of members of GRC shall not exceed 10, with chairperson of the GRC being selected from the representatives of the employer and the workers alternatively, on a rotational basis every year.</p>	Section 4	<p>Revision: The IR Code makes it mandatory for establishments with 20 workers to have a GRC, irrespective of any existing grievance redressal mechanism. Under IDA, establishments which had an established grievance redressal mechanism were not required to constitute a grievance redressal committee.</p>	<p>Relevant to Employers having at least workers.</p> <p>Stakeholders: HR & Compliance</p> <p>Important for understanding employer obligations at the workplace.</p>

²³ Please see Glossary #12.

²⁴ Grievance is not a defined term and would depend on the facts of each case.

S No.	Provision	Relevant Section	New Provision or Revision	Impacted Parties
	<p>The IR Code also provides for adequate representation of women in the GRC which should not be less than proportion of women workers to total number of workers in the industrial establishment. For example, if the ratio of total number of women workers to total number of workers in an establishment is 2:3, at least the same ratio (2:3) of women representation to be maintained in the constitution of GRC.</p> <p>The provision under Industrial Disputes Act, 1947 (“IDA”) in relation to GRC, whereby employers having alternative grievance redressal mechanisms were exempted from the requirement to constitute a GRC, has not been incorporated in the IR Code.²⁵</p> <p>Applications in respect of individual disputes may be filed before the GRC within 1 year of the date of cause of action leading to such dispute. The GRC may complete its proceedings within 30 days from receipt of such application.²⁶</p>			
2	<p>Negotiating Union:</p> <p>Employers²⁷ having registered trade union of workers will have a negotiating union or negotiating council for negotiating with the employer on certain matters which may be prescribed by the appropriate government.</p> <p>In case there is a single registered trade union, such trade union will be recognised as a negotiating union, subject to applicable qualifications.</p> <p>In case there are multiple trade unions in an industrial establishment, the trade union having support of at least 51 percent or more workers of the industrial establishment shall be recognised as the sole negotiating union of the workers.</p>	Section 14	New provision	<p>Relevant to workers & their employers</p> <p>Stakeholders: HR & Legal</p> <p>Important for understanding collective bargaining obligations at the workplace.</p>

²⁵ IR Code does not specify what would be considered as alternative grievance redressal mechanism.

²⁶ GRC can take more than 30 days to complete its proceedings because the timeline is only recommendatory.

²⁷ Includes all employers including employers in factories, commercial establishments, contractors, and legal representative of deceased employer. Please see Glossary #9.

S No.	Provision	Relevant Section	New Provision or Revision	Impacted Parties
3	<p>Negotiating Council:</p> <p>If there are more than one trade union of workers registered and functioning in an industrial establishment, and no such trade union has support of at least 51 percent of workers of the industrial establishment, the employer shall constitute a negotiating council, for negotiating with the employer on the matters which may be prescribed by the appropriate government.</p> <p>The negotiating council shall consist of the representatives of registered trade unions which have the support of at least 20 percent of the total workers of the industrial establishment.</p>	Section 14	New provision	<p>Relevant to workers & their employers</p> <p>Stakeholders: HR & Legal</p> <p>Important for understanding collective bargaining obligations at the workplace.</p>
4	<p>Worker Reskilling Fund:</p> <p>The appropriate government may notify and set up a worker re-skilling fund. In case of any retrenchment of a worker²⁸ by an employer, the employer will need to contribute equivalent to 15 days' last drawn wages of the retrenched worker to the worker re-skilling fund within 45 days of retrenchment.</p>	Section 83	New provision	<p>Relevant to employers</p> <p>Stakeholders: Finance, Payroll & HR</p> <p>May add costs in case of employer driven terminations.</p>
5	<p>Disciplinary inquiry timeline:</p> <p>Where any worker is suspended by the employer pending investigation or inquiry into complaints of misconduct against him, such investigation or inquiry shall be completed ordinarily within 90 days from the date of suspension. The employer will need to pay subsistence allowance²⁹ to the suspended workers, as may be provided under the applicable standing orders.</p>	Section 38	New provision ³⁰	<p>Relevant to employers with at least 300 workers at its establishment.</p> <p>Stakeholders: HR and Investigations</p> <p>Disciplinary inquiries to be concluded within a certain timeline.</p>

²⁸ The term “worker” has been defined under the IR Code. Please refer Glossary #12. So only those workers falling within the said definition will be governed by the IR Code.

²⁹ Subsistence allowance is to be calculated based on the number of days of suspension and has multiple considerations.

³⁰ There may be timelines under state specific model standing orders. There is no timeline under the Industrial Employment (Standing Orders) Act, 1946.

S No.	Provision	Relevant Section	New Provision or Revision	Impacted Parties
6	<p>Standing Orders:</p> <p>Industrial establishments employing at least 300 workers in the preceding 12 months will need to draft standing orders (based on the model standing orders (“MSO”) applicable to the employer as notified by the Central Government) or it can adopt the MSO as it is.</p> <p>This needs to be completed within:</p> <ol style="list-style-type: none"> 6 months from the date of commencement of IR Code or; 6 months from the date of application of standing order related provisions under Chapter IV of IR Code to the employer’s establishment owing to employment of at least 300 workers, whichever is later. <p>Option 1</p> <p>Industrial establishments draft standing orders (based on the MSO). Such standing orders will need to be forwarded by the employer electronically to the relevant certifying authority (appointed under IR Code) for certification.</p> <p>The certifying authority will need to conclude the process of certification of standing orders (including consultation with trade union/ worker representative) within 60 days of submission by employer, failing which the standing orders may be deemed to be certified.</p> <p>This is subject to compliance with conditions under IR Code based on which an employer’s draft standing orders will be certifiable.</p> <p>This includes:</p> <ol style="list-style-type: none"> compliance with IR Code and provision in the standing orders on all matters specified under First Schedule of IR Code. 	Section 30.	<p>Revision: The IR Code makes the standing order related provisions applicable to all industrial establishments with at least 300 workers. Industrial establishments will include commercial establishments.</p>	<p>Relevant to employers with at least 300 workers at its establishment.</p> <p>Stakeholders: HR & Compliance</p> <p>Employers with at least 300 workers at its establishment will need to comply with IR Code provisions related to adoption of standing orders and comply with MSO.</p>

S No.	Provision	Relevant Section	New Provision or Revision	Impacted Parties
6	<p>Option 2:</p> <p>If employer adopts MSO without any changes, the MSO shall be deemed to have been certified as per IR Code and employer will need to forward this information to the concerned certifying officer³¹ in a prescribed manner.³²</p> <p>Where the employer’s draft standing orders deviate from the MSO, the employer will need to follow the process prescribed under the IR Code for certification of modified standing orders.</p> <p>A group of employers is also permitted to jointly submit common draft standing orders for certification. The certified standing orders of an industrial establishment may be amended after expiry of 6 months from the date on which the standing orders become effective, by making application to the certifying officer in this respect in a prescribed manner.</p> <p>Please note:</p> <p>The Central Government has issued draft MSO tailored to the requirements of the service sector. The same is yet to be notified.³³</p>			
DISPUTE RESOLUTION AND STATUTORY AUTHORITIES				
7	<p>Limitation period:</p> <ol style="list-style-type: none"> 1. Conciliation officer³⁴ shall not hold any proceeding related to any industrial dispute after 2 years from the date the dispute arose. 2. In cases of industrial dispute pertaining to discharge, dismissal, retrenchment or otherwise termination of services, a worker may directly refer the dispute to an Industrial Tribunal after expiry of 45 days from the date of filing an 	Sections 53	New provision	<p>Relevant to employers</p> <p>Stakeholders: Legal</p> <p>Important for determining whether a claim is time barred.</p>

³¹ As per the IR Code, “certifying officer” means any officer appointed by the appropriate Government, by notification, to perform the functions of a certifying officer under the provisions of Chapter IV of the IR Code.

³² The rules may prescribe the details, like the manner of forwarding the information to the concerned certifying officer.

³³ The draft MSO for the services sector can be viewed at: https://labour.gov.in/sites/default/files/224080_compressed.pdf.

³⁴ The appropriate Government shall appoint conciliation officers through notification. Conciliation officers shall be charged with the duty of mediating in and promoting the settlement of industrial disputes.

S No.	Provision	Relevant Section	New Provision or Revision	Impacted Parties
7	<p>application for conciliation of such dispute, provided such reference is made before expiry of 2 years from the date of discharge/ retrenchment.</p> <p>3. A worker can file an application before the GRC in respect of disputes arising out of individual grievances within 1 year of the date on which the cause of action arises.</p>	Sections 53	New provision	<p>Relevant to employers</p> <p>Stakeholders: Legal</p> <p>Important for determining whether a claim is time barred.</p>
8	<p>Increased penalties for non-compliance:</p> <p>The penalties for non-compliance with certain legal requirements have been enhanced:</p> <p>a. Max. penalty for contravening provisions of IR Code pertaining to lay off, retrenchment, payment of compensation to worker in case of transfer of establishment and closing of establishments: fine of INR 2,00,000.</p> <p>b. Max. penalty in case of subsequent contravention: imprisonment for 6 months and/or fine of INR 5,00,000.</p> <p>c. Max. penalty for employers committing unfair labour practices (as provided under Third Schedule to IR Code): INR 2,00,000.</p>	Section 86	Revision: Penalties for contravention of laws covered under IR Code have been revised with substantial increase in monetary liability. For example: The highest monetary penalty under the Industrial Disputes Act, 1947 was INR 5,000, which has been increased substantially.	<p>Relevant to employers</p> <p>Stakeholders: Legal, Finance & Compliance</p> <p>Important for determining liabilities for non-compliance and in case of disputes.</p>
9	<p>Composition of offences:</p> <p>The IR Code provides for compounding of certain offences (in case of first convictions) in following manner:</p> <p>a. for an offence punishable with fine only, with payment of 50% of the maximum fine provided for that offence;</p> <p>b. for an offence punishable with imprisonment for a term which is not more than one year and also with fine, with payment of 75% of the maximum fine provided for that offence.</p> <p>Once an offence is compounded, no prosecution will be instituted against the offender for that offence.</p>	Section 89	New provision	<p>Relevant to employers</p> <p>Stakeholders: Legal & Compliance</p> <p>Important for determining liabilities for non-compliance and in case of disputes.</p>

Important matters to be provided under the State/Central rules to IR Code:

- **Manner of choosing members of GRC and matters that may be referred to GRC.**
.....
- **The Central Government shall notify the MSO for services sector³⁵ and manufacturing sector establishments.**
.....
- **The appropriate government shall notify rules for recognition of negotiating union or negotiating council & adjudication of disputes of trade unions.**

³⁵ The draft MSO for the services sector can be viewed at: https://labour.gov.in/sites/default/files/224080_compressed.pdf.

Glossary of Relevant Definitions

1. Wages:

“wages” means all remuneration whether by way of salaries, allowances or otherwise, expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes, —

- (i) basic pay;
- (ii) dearness allowance; and
- (iii) retaining allowance, if any,

but does not include--

- (a) any bonus payable under any law for the time being in force, which does not form part of the remuneration payable under the terms of employment;
- (b) the value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the appropriate Government;
- (c) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;
- (d) any conveyance allowance or the value of any travelling concession;
- (e) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment;

- (f) house rent allowance;
- (g) remuneration payable under any award or settlement between the parties or order of a court or Tribunal;
- (h) any overtime allowance;
- (i) any commission payable to the employee;
- (j) any gratuity payable on the termination of employment;
- (k) any retrenchment compensation or other retirement benefit payable to the employee or any ex gratia payment made to him on the termination of employment

Provided that, for calculating the wages under this clause, if payments made by the employer to the employee under clauses (a) to (i) exceeds one-half, or such other per cent as may be notified by the Central Government, of the all remuneration calculated under this clause, the amount which exceeds such one-half, or the per cent so notified, shall be deemed as remuneration and shall be accordingly added in wages under this clause:

Provided further that for the purpose of equal wages to all genders and for the purpose of payment of wages, the emoluments specified in clauses (d), (f), (g) and (h) shall be taken for computation of wage.

Explanation. – Where an employee is given in lieu of the whole or part of the wages payable to him, any remuneration in kind by his employer, the value of such remuneration in kind which does not exceed fifteen per cent. of the total wages payable to him, shall be deemed to form part of the wages of such employee.

2. Aggregator:

“aggregator” as per SS Code means a digital intermediary or a market place for a buyer or user of a service to connect with the seller or the service provider.

3. Gig-Worker

“gig worker” as per SS Code means a person who performs work or participates in a work arrangement and earns from such activities outside of traditional employer-employee relationship.

4. Platform Worker

“platform work” as per SS Code means a work arrangement outside of a traditional employer-employee relationship in which organisations or individuals use an online platform to access other organisations or individuals to solve specific problems or to provide specific services or any such other activities which may be notified by the Central Government, in exchange for payment.

“platform worker” means a person engaged in or undertaking platform work.

5. Fixed Term Employment

“fixed term employment” as per SS Code and IR Code means the engagement of a worker on the basis of a written contract of employment for a fixed period:

Provided that—

- (a) his hours of work, wages, allowances and other benefits shall not be less than that of a permanent worker doing the same work or work of similar nature;
- (b) he shall be eligible for all statutory benefits available to a permanent worker proportionately according to the period of service rendered by him even if his period of employment does not extend to the qualifying period of employment required in the statute; and
- (c) he shall be eligible for gratuity if he renders service under the contract for a period of one year.

6. Establishment as per OSH Code

“establishment” means (i) a place where any industry, trade, business, manufacturing or occupation is carried on in which ten or more workers are employed; or (ii) motor transport undertaking, newspaper establishment, audio-video production, building and other construction work or plantation, in which ten or more workers are employed; or (iii) factory, for the purpose of Chapter II, in which ten or more workers are employed, notwithstanding the threshold of workers provided in clause (w); or (iv) a mine or port or vicinity of port where dock work is carried out: Provided that in sub-clauses (i) and (ii), the threshold of worker specified therein shall not be applicable in case of such establishment or class of establishments, in which such hazardous or life threatening activity is being carried on, as may be notified by the Central Government : Provided further that notwithstanding any threshold provided in the definition of factory in clause (w), for the purposes of Chapter II, the establishment specified in sub-clause (i) or sub-clause (ii) or sub-clause (iii) shall be deemed to be the establishment within the meaning of this clause though the number of employees employed are ten or more.

7. Contract Labour

“contract labour” as per OSH Code and SS Code means a worker who shall be deemed to be employed in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer and includes inter-State migrant worker but does not include a worker (other than part time employee) who is regularly employed by the contractor for any activity of his establishment and his employment is governed by mutually accepted standards of the conditions of employment (including engagement on permanent basis), and gets periodical increment in the pay, social security coverage and other welfare benefits in accordance with the law for the time being in force in such employment;

8. Core Activity of an Establishment

“core activity of an establishment” as per OSH Code means any activity for which the establishment is set up and includes any activity which is essential or necessary to such activity:

Provided that the following shall not be considered as essential or necessary activity, if the establishment is not set up for such activity, namely: –

- (i) sanitation works, including sweeping, cleaning, dusting and collection and disposal of all kinds of waste;
- (ii) watch and ward services including security services;
- (iii) canteen and catering services;
- (iv) loading and unloading operations;
- (v) running of hospitals, educational and training Institutions, guest houses, clubs and the like where they are in the nature of support services of an establishment;
- (vi) courier services which are in nature of support services of an establishment;
- (vii) civil and other constructional works, including maintenance;
- (viii) gardening and maintenance of lawns and other like activities;
- (ix) housekeeping and laundry services, and other like activities, where these are in nature of support services of an establishment;
- (x) transport services including, ambulance services;
- (xi) any activity of intermittent nature even if that constitutes a core activity of an establishment.

9. Employer:

“employer” as per IR Code means a person who employs, whether directly or through any person, or on his behalf or on behalf of any person, one or more employee or worker in his establishment and where the establishment is carried on by any department of the Central Government or the State Government, the authority specified by the head of the department in this behalf or where no authority is so specified, the head of the department, and in relation to an establishment carried on by a local authority, the chief executive of that authority, and includes,—

- (i) in relation to an establishment which is a factory, the occupier of the factory as defined in clause (n) of section 2 of the Factories Act, 1948 and, where a person has been named as a manager of the factory under clause (f) of sub-section (1) of section 7 of the said Act, the person so named;

- (ii) in relation to any other establishment, the person who, or the authority which has ultimate control over the affairs of the establishment and where the said affairs are entrusted to a manager or managing director, such manager or managing director;
- (iii) contractor; and
- (iv) legal representative of a deceased employer.

10. Inte- state migrant workers:

“inter-State migrant worker” as per OSH Code means a person who is employed in an establishment and who— (i) has been recruited directly by the employer or indirectly through contractor in one State for employment in such establishment situated in another State; or (ii) has come on his own from one State and obtained employment in an establishment of another State (hereinafter called destination State) or has subsequently changed the establishment within the destination State, under an agreement or other arrangement for such employment and draws wages not exceeding the amount of rupees eighteen thousand per month or such higher amount as may be notified by the Central Government from time to time.

11. Industrial establishment or undertaking:

“industrial establishment or undertaking” as per IR Code means an establishment or undertaking in which any industry is carried on: Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,— (i) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking which is not carrying on or aiding the carrying on of any such activity, such unit shall be deemed to be a separate industrial establishment or undertaking; (ii) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking.

12. Worker

“worker” as per IR Code means any person (except an apprentice as defined under clause (aa) of section 2 of the Apprentices Act, 1961) employed in any establishment to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and includes working journalists as defined in clause (f) of section 2 of the Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 and sales promotion employees as defined in clause (d) of section 2 of the Sales Promotion Employees (Conditions of Service) Act, 1976, and for the purposes of any proceeding under this Code in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched or otherwise terminated in connection with, or

as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person— (i) who is subject to the Air Force Act, 1950, or the Army Act, 1950, or the Navy Act, 1957; or (ii) who is employed in the police service or as an officer or other employee of a prison; or (iii) who is employed mainly in a managerial or administrative capacity; or (iv) who is employed in a supervisory capacity drawing wages exceeding eighteen thousand rupees per month or an amount as may be notified by the Central Government from time to time: Provided that for the purposes of Chapter III (Trade Unions), “worker”— (a) means all persons employed in trade or industry; and (b) includes the worker as defined in clause (m) of section 2 of the Unorganised Workers’ Social Security Act, 2008.

nasscom

Address : Plot no. 7 to 10, Sector 126, Noida- 201303, India

Phone : +91-120-4990111

Email : policy@nasscom.in

Web : www.nasscom.in

Download a copy of the Handbook at: <https://tinyurl.com/39uxvfe5>